

## SENATE BILL NO. 5033

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Surovell)

A BILL to amend and reenact § 19.2-265.6 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-298.02, relating to court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-265.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-298.02 as follows:**

**§ 19.2-265.6. Dismissal of criminal charges on Commonwealth's motion; effect of dismissal of criminal charges.**

A. Upon motion of the Commonwealth to dismiss a charge, whether with or without prejudice, and with the consent of the defendant, a court shall grant the motion unless the court finds by clear and convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim as defined in § 19.2-11.01 because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.

B. No dismissal of any criminal charge by a court shall bar subsequent prosecution of the charge unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the dismissal is with prejudice.

**§ 19.2-298.02. Deferred disposition in a criminal case.**

A. A trial court presiding in a criminal case may, with the agreement of the defendant and the Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii) the

request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the court. Final disposition may include (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

B. Upon violation of a term or condition, the court may enter an adjudication of guilt, if not already entered, and make any final disposition of the case provided by subsection A. Upon fulfillment of the terms and conditions, the court shall adjudicate the matter consistent with the agreement of the parties or, if none, by conviction of an alternative charge or dismissal of the case.

C. By consenting to and receiving a deferral of proceedings or a deferral of entry of a final order of guilt and fulfilling the conditions as specified by the court as provided by subsection A, the defendant waives his right to appeal such entry of a final order of guilt.

Prior to granting a deferral of proceedings, a deferral of entry of a conviction order, if none, or a deferral of a final order, the court shall notify the defendant that he would be waiving his rights to appeal any final order of guilt if such deferral is granted.

D. Upon agreement of all parties, a charge that is dismissed pursuant to this section may be considered as otherwise dismissed for purposes of expungement of police and court records in accordance with § 19.2-392.2, and such agreement of all parties and expungement eligibility shall be indicated in the final disposition order.

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